IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No.297/2005

Office Notes, Memoranda of Coram, appearances, Court's orders or directions : Court's or Judge's orders and Registrar's orders.

CORAM : A.P. Lavande, J.
Dated : December 20, 2006

Heard Mr. S.D. Deshpande, Advocate for the appellant.

By this appeal, the appellant takes exception to the judgment and decree dated 14.2.2005 passed by Joint District Judge, Nagpur in Regular Civil Appeal No.494/1997 dismissing the appeal filed against judgment and decree dated 30.4.1992 passed by 5th Joint Civil Judge, Jr. Dn. Nagpur in Regular Civil Suit No.863/1985.

The appellant-original plaintiff filed the above suit against respondents-defendants seeking declaration that the allotment order passed by defendant no.2 is ab-initio void and for removal of encroachment made by defendant no.1. According to the plaintiff, it runs a school since 1958 in the plot no. 175 at Panchpaoli, Nagpur area admeasuring 2.4 acres which was allotted by

respondent no.2. The appellant was granted lease-hold right in respect of the said plot for the construction of the building. The plaintiff carried out construction on the northern side of the plot and southern side was vacant. During the period of 1968 to 1971 the plaintiff committed defaults in making payments of rent to respondent no.2. Therefore, defendant no.2 served notice dated 19/12/1972 calling upon the plaintiff to pay arrears of rent within the period of 15 days and in case of failure to pay within the stipulated time, the allotment of the land was to stand cancelled from 3rd January 1973. Thereafter in spite of notices from defendant no.2, the plaintiff did not pay the amount and on 29th September 1983 cheque for Rs. 20,843.80 was forwarded to defendant no. 2 which was not accepted by defendant no.2. The suit was contested by the defendants and it was the case of respondent no.2 that the allotment of the suit plot was cancelled and half portion of plot no.175 admeasuring 3910 square meters was allotted to respondent no.1 which was approved by the Government in terms of the relevant Rules. The trial Court, upon appreciation of the evidence

led by the parties, held that the allotment of the plot in favour of the plaintiff was legally cancelled and the allotment of the portion of the plot in favour of defendant no.1 was not void. Consequently, the trial Court decreed the suit. The lower appellate court in appeal preferred by the plaintiff concurred with the findings given by the trial Court and consequently dismissed the suit. It is pertinent to note that although no specific issue was framed by the trial Court, both the Courts held that the suit filed against defendant no.2 without serving a statutory notice under Section 115 of Nagpur Municipal Corporation Act (hereinafter referred to as “the Act”) was not maintainable.

Mr. Deshpande, learned counsel for the appellant submitted that the appellant is not aggrieved by the allotment of half portion of plot no.175 to the respondent but the appellant is interested in protecting the possession in respect of half portion on which the appellant has already made construction where presently the school is being run. He submitted that there was no valid termination of lease by respondent no.2 and in any case, the appellant had paid the rent in the year

1983 and as such there was no question of termination of lease by respondent no.2.

Having perused the judgments passed by both the Courts below and having considered the submissions made by learned counsel, I find no merit in the present appeal. It is pertinent to note that though no specific issue was framed by the trial Court as well as by the lower appellate Court, both the Courts below have held that the suit filed against defendant no.2 was not maintainable for want of notice under Section 115 of the Act. No fault can be found with this finding. Therefore, the suit filed by the plaintiff was not maintainable. Even on merits, I do not find that any case has been made out by the appellant. Once the appellant committed breach of the conditions of lease and the respondent terminated the lease by giving notice in 1973, the plaintiff could not have filed the suit in the year 1985 seeking relief for declaration against defendant no.2 and removal of an encroachment by defendant no.1. In case the plaintiff was aggrieved, it was necessary for the plaintiff to seek appropriate relief regarding termination of lease by defendant no.2 which

admittedly the plaintiff has not done. That being the position, I do not find any legal infirmity in the findings given by both the Courts below. In any case, no substantial question of law is involved in the present appeal. Hence, the appeal is summarily rejected.

C.A.No.3505/2005

In view of dismissal of second appeal, nothing survives in the application. Hence, the civil application is dismissed as infructuous.

JUDGE

A.